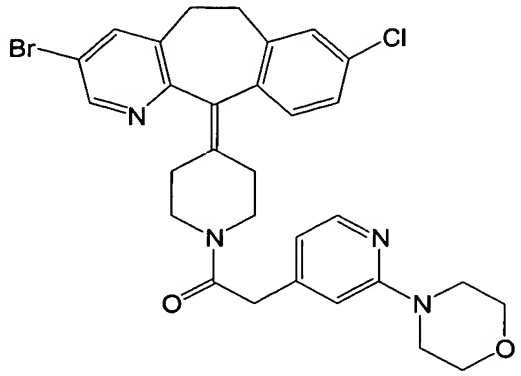
In response to the office action, Applicants elect with traverse the species of Example 410-S having the following structure:



Applicants make this election of species with the understanding that if the elected species is found allowable, the generic claim will be further examined.

The Examiner is thanked for her time generously extended during the telephone conference of June 11, 2003 discussing the restriction requirement. In response to the telephone conference, Applicants are submitting herewith a copy of the restriction requirement form Applicants' parent application Ser. No. 08/410,187.

For continuity of prosecution, Applicants request the Examiner to consider the parent's restriction requirement and apply the same to the parent application. If this is done, then applicants elect with traverse the compounds of Group I.

Also, the Examiner is requested to reconsider and withdraw the restriction requirement, since the compounds of formula 5.0, 5.1, 5.2 and 5.3 have some common structural features. For example, the tricyclic ring is common to all the compounds.

Also, the compounds are distinct from each other, since the compounds have the same utilities, and in view of MPEP § 803 (July 1998) wherein it is stated that:

> "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."

Accordingly, the Examiner is requested to reconsider and to withdraw the restriction requirement.

Applicants reserve the right to pursue the non-elected subject matter in a divisional application.

Example 410-S falls within the scope of the compound of formula 5.2 of claim 13, as amended on December 20, 2001, wherein R^{20}, R^{21} and R^{46} are each independently selected from the group consisting of:

(19) substituted pyridyl or substituted pyridyl N-oxide wherein the substituents are selected from methypyridyl, morpholinyl, imidazole, 1-piperidinyl, 1-(4-methylpiperazinyl), $-S(O)_tR^{11}$, or any of the substituents *given above (*see (12) under the definition of R^{20}, R^{21} and R^{46} of amended claim 13) for said substituted phenyl, and said substituents are bound to a ring carbon by replacement of the hydrogen bound to said carbon. See Pages 4-5 of Preliminary Amendment of December 20, 2001.

Applicants wish to point out to the Examiner that in addition to the elected species (Example 410-S), Examples 410-Q, 410-T, 410-U, 411-EE, and 411-GG also fall within the scope of compound 5.2 of amended claim 13 as discussed above.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA VA 22313-1450 ON

June 12, 2003
(DATE OF DEPOSIT)

ROBERT L. BERNSTEIN REG. NO. 46,020
(REGISTERED REPRESENTATIVE)

Robert L. Bernstein
(SIGNATURE AND DATE)

Respectfully submitted,

Robert L. Bernstein

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1. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 13-21 (formulae 5.1, 5.2, 5.3A and 5.3B), 26 (formulae 1.0h and 1.0i), 27, and 28 (compounds with a piperidinyl or piperidinylidene radical), drawn to compounds and compositions, wherein X is CH or C, classified in Class 546, subclass 93, Class 544, subclasses 333, 405, 316, 238, 126, 361, 58.6, and 60, and Class 514, subclasses 290, 256, 253, 254, 232.8, and 228.5.

II. Claims 13-21 (formulae 5.0 and 5.3), 26 (formula 1.0m), and 28 (compounds with a piperazinyl radical), drawn to compounds and compositions, wherein X is N, classified in Class 544, subclasses 361, 295, 357, 316, 238, 121, 357, 58.6 and 60 and Class 514, subclasses 254, 232.8 and 228.5.

III. Claims 1-12, drawn to methods of use, classified in Class 514, subclasses 290, 256, 254, and 232.8. It should be noted that even though the methods of using compounds with X = CH or C are patentably distinct from those using compounds with X = N, the examiner has exercised his discretion to combine them in this group.

IV. Claims 22, 23 and 25, drawn to processes of making compounds, classified in Class 544, subclass 361 and Class 564, subclass 93.

V. Claims 24 and 26 (formulae 1.0j and 1.0n and the last formula), drawn to intermediates and a process of making intermediates, classified in Class 546, subclass 79+.

The compounds of Groups I and II are patentably distinct because they do not share a common core structure.